BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 28th November 1967.

Present :

Sri V. C. Ramachandran, B.Sc., A.R.C.S., Bar-at-Law. ... *Presiding Officer.*

Complaint No. 1 of 1967 in
A. I. D. No. 2 & 5 of 1966.

Sri S. V. Lakshmana Rao, No. 34-35, Ranoji Rao Lane, Kalasipalyam, Bangalore-2. ... ... *Complainant.*

Vs.

The Management of Metro Malleable Manufacturers (P) Ltd., Silver Jubliee Park Road, Bangalore. ... *Opposite Party.*

Reference.

(G. O. No. PLM 425 LLD 62, dated 26th October 1962 and G. O. No. PLM 288 LLD 63, dated 27th November 1964).

Appearances :

For the Complainant:—Sri K. Subba Rao, Advocate, Bangalore.

For the Opposite Party :—Sri Sheik Ebrahim, Labour Officer, Metro Malleable Manufacturers (P) Ltd., Bangalore.

AWARD

This is a complaint under Section 33 (A) of the Industrial Disputes Act, complaining that the Opposite Party, *viz.*, the Management of the Metro Malleable Manufacturers (P) Ltd., has contravened the provisions of Section 33 of the Industrial Disputes Act, 1947. The Complainant was employed in the Opposite Party-concern as a clerk from 10th May 1965 on a monthly salary of Rs. 75 which was subsequently raised to Rs. 100 on 2nd October 1965, which was a public holiday on account of Gandhi Jayanthi, the workers of the concern resolved to work on that day in spite of

that being a holiday so as to contribute the wages of that day towards National Defence Fund. The Management agreed to the proposal and the workers worked on 2nd October 1965. The Management, however, failed to deposit the wages of that day to the National Defence Fund inspite of repeated demands. The Complainant questioned the Labour Officer of the Factory who assured him that the amount will be paid towards the National Defence Fund. That assurance was not fulfilled. The workers had other grievances with the Management with regard to Bonus and the implementation of the Interim recommendations of the Engineering Wage Board. The Complainant prepared a representation with regard the grievances of the workmen for submission to the Labour Department of the Government of Mysore. When the Labour Officer came to know of the move the complainant was making, he called him to his office, threatened him and on the next day he was given a letter terminating his services with effect from 8th December 1966. The complainant was forced to sign some receipts for payment of wages.

2. The case of the complainant is that he was dismissed because of the representation that he made to the Labour Commissioner with regard to the grievances of the workmen and therefore, the dismissal was the result of victimisation and amounts to unfair labour practice. The Opposite Party has not taken the approval of the Tribunal as contemplated under Section 33 of the Industrial Disputes Act, 1947, and thereby contravened the provisions of Section 33 of the said Act and hence the complaint. The complainant prays that he may be ordered to be reinstated in his original post with continuity of service and back wages.

3. The Opposite Party resisted the complaint on the ground that the complainant was a probationer from 1st February 1966. The employer has a right to terminate his service at any time and that in pursuance of the contract, the said termination has taken place. The Management denied that they were aware of any representation made to the Labour Commissioner with regard to the grievances of the workmen. The termination of the services of the complainant was not by way of penalty or punishment, but in pursuance of the terms of the contract. There is no question of principles of natural justice being violated or victimisation or unfair labour practice being resorted to. The Opposite Party submits that the complaint is not maintainable and prays that it may be dismissed with costs.

4. The following Issues have been framed :—

"(1) Whether there has been a contravention of provisions of Section 33 of Industrial Disputes Act?

(2) Whether the service of the complainant was terminated in accordance with the terms and conditions of contract?

(3) Whether the Opposite Party is within its rights in terminating the services of the Complainant and have not violated Sections 33 of the I. D. Act?

(4) Whether the Complaint cannot be entertained under Section 33(A) of the Industrial Disputes Act?

(5) Whether the complainant is governed by the Certified Standing Orders?

(6) Whether the Complainant's services have been terminated with an intention of victimising him?

(7) To what relief, if any, is the complainant entitled?

5. An order was passed on 6th July 1967 holding that the complaint is maintainable. It is common ground between the Parties that the complainant's services were terminated and that no permission or approval of this tribunal had been obtained. It is also undisputed that at the time of the dismissal or discharge of the complainant, an industrial dispute was pending between the workmen of the Opposite Party concern and the Opposite Party. That was a dispute which concerns the entire workmen including the complainant as it dealt with such questions as bonus which affects every workman of the concern. Such being the case, approval of the action taken by the employer must have been obtained from the Tribunal before which an industrial dispute was pending for adjudication. In asmuchas the approval has not been obtained, the complainant's case is that there is a contravention of section 33-A of the Industrial Disputes Act, 1947.

6. The Opposite Party contends that no approval is contemplated as the termination of the services of the complainant was not on account of any misconduct but purely according to the terms of the contract and hence the provisions of the Industrial Disputes Act are not attracted. The short question, therefore, for consideration is whether the termination of the services of the complainant was purely under the terms of the contract or was it a punishment for misconduct committed by the complainant or was

it for an ulterior motive to victimise the complainant for his trade union activities It is a settled law that even if the employer takes action in pursuance of the terms of the contract, it is still open to the Tribunal to find out whether the action taken was for the purpose of punishing the worker or for victimisation or for an unfair labour practice. If it is as a punishment or as victimisation, it is still open to the Tribunal to set aside the Order of the termination of the worker which is purported to be made under the contractual agreement between the Parties.

7. In the instant case, there is overwhelming evidence to show that the termination of the services of the complainant was not as a result of the exercise of the contractual rights of the employer but because of two main reasons.—Firstly, because he was said to have been irregular in attendance and secondly because he was taking an active part in ventilating the grievances of the workmen with regard to the non-payment of the wages earned by them on Gandhi Jayanti Day which was to be paid to the National Defence Fund and also because of the agitation for payment of bonus and the implementation of the interim recommendations of the Engineering Wage Board. One of the Directors of the Opposite Party and also the Works Manager, H. H. Nassur, categorically states that the reason for termination of the services of the Complainant was because he was irregular in attendance and his work was not satisfactory. According to the Standing Orders, habitual absence without permission and absence for more than 10 days amount to misconduct entailing dismissal of the workman after a proper enquiry. No such enquiry was made nor any explanation of the workman was taken. The termination on the ground of being irregular in attendance is against the provisions of the Standing Orders of the Company. Even assuming for a moment that the termination of the services of the complainant was not as a result of punishment for any misconduct, there is evidence to show that it was due to victimisation. It is common ground between the parties that in the year 1965 when there was Pakistan Agression in Jammu and Kashmir, the workers out of sense of duty and patriotism resolved to work on Gandhi Jayanti Day which fell on 2nd October 1965 in order to send the wages of that day towards the National Defence Fund. The Management agreed to the suggestion of the workers and accordingly the workers worked on a public holiday, *i.e.*, 2nd October 1965 and became entitled to the wages for that day. The Management did not pay the wages for that day either to the Union or to the

National Defence Fund, admittedly till September 1966. No proper explanation was forthcoming as to why there was the inordialnte delay inthe payment of money which was legitimately earnedaby the wo rkers and which had to be contributed to the Nation Defence Fund. The workers naturally were agitated over this matter and subsequently certain other disputes with the Management sprung up with regard to the Bonus for the year 1965-66 and also implementation of the interim recommendations of the Engineering Wage Board. The Complainant seems to have taken a leading part in the agitation to redress the grievances of the workmen and collected a representation signed by the workmen and said to have sent it to the Labour Commissioner on 7th December 1966. A certificate of posting has been produced which is marked as Ext.W.4, that is in respect of letters addressed to the Labour Commissioner and the Assistant Labour Commissioner. The letter under the Certificate of Posting is marked as Ext.W.3 dated 7th December 1966 which is signed by the Complainant. In that letter, the said grievances have been set down and the complainant had asked the Labour Commissioner to inquire into the alleged misappropriation of the funds contributed towards the National Defence Fund and also for payment of Bonus and Interim Relief. The Complainant's services were terminated on the very next day, *viz.*, 8th December 1966 and it is reasonable to suppose that the termination was due to the active part taken by the complainant in getting the signatures of the workers to the petition submitted to the Labour Commissioner. It was argued that there is a tampering in the Certificate of Posting but that is not of much importance because the management might have learnt that the complainant was preparing such a representation and hence they took the action against him. That is a grave case of victimisation and therefore, colourable exercise of the powers conferred on the management.

8. Even according to the Standing Orders, the termination of employment for any misconduct which includes under clause 12 (6) absence without leave for eight working days within one month unless it is afterwards proved to the satisfaction of the manager that such absence was unavoidable can be punished only after adjudication by the Management after the employee concerned has been given an opportunity of being heard. No such opportunity was given to the complainant, but he was suddenly called on 8th December 1966 and discharged from service. As a matter of fact, it is not even correct to call him as a probationer

because he was on a permanent employment. He had joined work on 10th May 1965 as a Clerk on Rs. 75 and he was getting increment of Rs. 10 per month and 4 or 5 months later, he got a further increment of Rs. 15. He was tested on 22nd June 1966 and the order after testing was to put him on Rs. 100 consolidated wages from February 1965 on a scale of Rs. 100-5-150 as a clerk with 3 years contract and one year probation. That order was passed on 28th February 1966 and even before one year mentioned therein has expired, his services were terminated. There was no whisper at any time that his work was not satisfactory. For the first time in Court an allegation is made of his unsatisfactory work. Apart from the *Ipse dixit* of the Works Manager, there is nothing to show that his work was not satisfactory. He had passed an examination conducted by the Management and he was given frequent increments showing thereby that his work was found to be satisfactory. He was promoted from one grade to another grade which also shows that there was nothing to complain against his work. Even if the work is unsatisfactory in the higher post, he should have been reverted to his original post and no reasonable management would have terminated his services. It leads to the irresistable conclusion that the termination of his services was not due to the unsatisfactory nature of his work, but might have been due to the so called alleged irregularity in attendance or to his continuous participation in Trade Union activities which the management thought was detrimental to their own interest. Hence the termination is not *bona fide* exercise of the powers conferred on the management under the contract. In such cases the order of termination is liable to be set aside as laid down in many decisions.

In 1966 II LLJ 428, the requirement of *bona fide* was held to be essential and if the termination of services was a colourable exercise of the power or was as a result of victimization or unfair labour practice, the industrial tribunal would have jurisdiction to intervene and set aside such termination. The following observations are made in 1966 II LLJ 899 :—

> "Section 33 is enacted for purpose of maintaining the *status quo* and preventing the relationship between the management and the workers getting worse during the pendency of the industrial dispute. If the contention of the learned counsel for the petitioner is to be accepted, while Section 33 (2) (b) prohibited the discharge or dismissal as punishment for misconduct,

> the management would be at liberty to discharge or dismiss a worker without assigning any reasons, by way of victimisation or unfair labour practice. The word 'misconduct' should be given a wide meaning to include discharge or dismissal by the management for inadequate or unsustainable reasons."

In view of what is stated above, my findings on the various Issues are as follows :—

(1) There has been a contravention of the provisions of Section 33 of the Industrial Disputes Act, as no approval was obtained for terminating the services of the complainant as a punishment for misconduct, *viz.*, Habitual absence without permission.

(2) The services of the complainant were terminated not *bona fide* according to the terms and conditions of contract, but *mala fide* in order to resort to victimisation and unfair labour practice as the complainant was taking a leading part in the Trade Union activities and had brought the grievances of the workmen to the officials of the Labour Department of the Government of Mysore.

(3) The Opposite Party is not within his rights in terminating the services of the complainant and had violated the provisions of Section 33 of the Industrial Disputes Act.

5. The complainant is governed by the Certified Standing Orders.

6. The Complainant's services have been terminated with the intention of victimising him.

In the result, and in view of my findings on the various Issues, I pass the following Award :—

The Opposite Party is directed to reinstate the complainant in service with back wages and continuity of service.

The complainant is entitled to the costs of this application which is fixed at Rs. 50.

V. C. RAMACHANDRAN,
Presiding Officer,
Addl. Industrial Tribunal, Bangalore.